

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE COMMISSIONER OF COMMERCE

In the Matter of the Mortgage
Originator License of Gateway
Financial Corporation, License No.
20185023

**FINDINGS OF FACT,
CONCLUSIONS, AND
RECOMMENDATION**

The above-entitled matter came on for hearing before Administrative Law Judge Barbara L. Neilson on June 24, 2003, at 9:30 a.m. at the Office of Administrative Hearings in Minneapolis, Minnesota. Michael J. Tostengard, Assistant Attorney General, Suite 900, 445 Minnesota Street, St. Paul, Minnesota 55101-2127, appeared on behalf of the Department of Commerce ("the Department"). There was no appearance by or on behalf of the Respondent, Gateway Financial Corporation, 8149 Telegraph Road, Bloomington, MN 55438. There were no additional submissions after June 24, 2003.

NOTICE

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record. The Commissioner may adopt, reject or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Commissioner must not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact the office of the Commissioner of Commerce, 85 Seventh Place East, Suite 500, St. Paul, Minnesota 55101, to ascertain the procedure for filing exceptions or presenting argument.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

STATEMENT OF ISSUE

The issue in this case is whether Gateway Financial Corporation devised and carried out a plan to create and use a false gift letter in order to induce the financing of a home purchase, and thereby violated Minn. Stat. § 58.13, subd. 1(9), by making or

causing to be made a false, deceptive, or misleading statement or representation in connection with a residential loan transaction; and, if so, whether the Commissioner should revoke or suspend the Respondent's license or censure Respondent and/or impose civil penalties under Minn. Stat. § 45.027, subds. 6 and 7, and 58.12.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent, Gateway Financial Corporation, has been licensed as a mortgage originator since June 29, 1999. Michael Mugaas is the owner and chief officer of the Respondent.^[1]

2. The Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges was served on Gateway Financial Corporation, 8149 Telegraph Road, Bloomington, MN 55438, Attn: Michael Mugaas, by first class U.S. mail on April 1, 2003.^[2]

3. The Notice of and Order for Hearing and Order to Show Cause contained the following language in bold type:

If Respondent fails to attend or otherwise appear at any prehearing conference, settlement conference, or hearing in this matter without the prior consent of the judge, or fails to comply with any interlocutory order of the judge after having been served with a copy of this Order, Respondent shall be deemed in default and the allegations or issues set forth herein may be deemed proved, and Respondent's license may be revoked or suspended, Respondent may be censured and/or a civil penalty may be imposed against Respondent without further proceedings.^[3]

4. Mr. Mugaas appeared on behalf of the Respondent at a prehearing conference held on May 1, 2003. The hearing date and a discovery schedule were set during that prehearing conference. The Administrative Law Judge sent a letter Order to Mr. Mugaas and counsel for the Department on May 5, 2003, confirming the schedule established during the prehearing conference and ordering that the hearing be held on June 24, 2003.

5. The Respondent did not make any prehearing request for a continuance of the hearing or any other relief. The Respondent did not appear at the hearing in this matter scheduled for June 24, 2003. The Respondent also did not respond prior to the hearing to telephone calls from counsel for the Department or to a settlement proposal made by the Department.

6. Because the Respondent failed to appear at the hearing in this matter, it is in default.

7. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges are hereby taken as true and incorporated into these Findings of Fact.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Administrative Law Judge and the Commissioner of Commerce have jurisdiction over this matter pursuant to Minn. Stat. §§ 14.50, 45.027, and 58.12.

2. The Notice of Hearing issued by the Department was proper and the Department has fulfilled all relevant substantive and procedural requirements of law and rule.

3. The Respondent, having made no appearance at the hearing, and not requesting any continuance or relief, is in default. Pursuant to Minn. Rules part 1400.6000, the allegations contained in the Notice of and Order for Hearing and Order to Show Cause are hereby taken as true.

4. The Respondent has violated Minn. Stat. § 58.13, subd. 1(9). The Respondent is subject to discipline and/or civil penalties pursuant to Minn. Stat. §§ 45.027, subds. 6 - 7, and 58.12, and the imposition of sanctions is in the public interest.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS HEREBY RECOMMENDED that the Commissioner of Commerce take disciplinary action against the mortgage originator license of Gateway Financial Corporation and impose an appropriate civil penalty.

Dated: June 25, 2003

S/ Barbara L. Neilson

BARBARA L. NEILSON
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the Agency is required to serve its final decision upon each party and the Administrative Law Judge by first-class mail or as

otherwise provided by law. If the Commissioner fails to issue a final decision within 90 days of the close of the record under Minn. Stat. § 14.61, this report becomes a final decision. In order to comply with Minn. Stat. § 14.62, subd. 2a, the Commissioner must then return the record to the Administrative Law Judge within 10 working days to allow the Judge to determine the discipline to be imposed.

Reported: Default.

^[1] Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges, ¶ 1.

^[2] See Affidavit of Service by First Class Mail attached to Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges.

^[3] Notice of and Order for Hearing, Notice of Prehearing Conference and Statement of Charges, p. 5.